

**CERTIFICATE OF SERVICE**

I, James REID, certify that the **IMMINENT HAZARD OPERATIONS OUT-OF-SERVICE ORDER** (Number: **TN-2012-5000-IMH**) issued by the United States Department of Transportation, Federal Motor Carrier Safety Administration to Edwin Ayache dba Three Angels Farms, (USDOT 2100311) was served this 29<sup>TH</sup> day of June 2012 at 10:13 o'clock a.m. by personally handing it to:

DORIAN AYACHE (name)  
PRESIDENT OF THREE ANGELS FARMS (title)

at the location of:

PRINCIPLE PLACE OF BUSINESS  
151 MILL ROAD, Lebanon, TN 37090

James REID (signature)  
James REID (name)

SAFETY INVESTIGATOR (title)

640 GRASSMERE PARK SUITE 111 (business address)

NASHVILLE, TN 37211

(615) 781-5781 (office telephone number)

Jon Dierberger, DA  
(615) 781-5782

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**EDWIN AYACHE dba THREE  
ANGELS FARMS  
USDOT 2100311**

**EDWIN AYACHE,  
Individually**

**DORIAN AYACHE,  
Individually.**

) **Order No.: TN-2012-5000-IMH**

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) **Service**  
) **Date:** 6/29/12

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) **Service**  
) **Date:** \_\_\_\_\_

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) **Service**  
) **Date:** 6/29/12

**IMMINENT HAZARD  
OPERATIONS OUT-OF-SERVICE ORDER**

This notice is an Imminent Hazard Operations Out-of-Service Order ("Order") by the United States pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 31144(c)(1) and (2), 49 U.S.C. § 31144(c)(5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (USDOT), Atlanta, Georgia. This Order applies to Edwin Ayache dba Three Angels Farms, USDOT number 2100311, Edwin Ayache, Individually, and Dorian Ayache, Individually (referred to collectively herein as "you," "your," and/or "Three Angels Farms") and to the commercial motor vehicles described herein.

The United States finds your commercial motor vehicle operations and the continued operations of your commercial motor vehicles (VIN 1FUFDZYBXSP597825, VIN 1FUBAHCG43LL07437, VIN 1FUFDSEB7SP35946, and VIN 4V4WDBRF8TN7S8369), herein "commercial motor vehicles," "motor vehicles," and/or "vehicles") constitutes an

“imminent hazard.” This finding means that based upon your present state of unacceptable safety compliance, including your failure to adequately establish and maintain safety management systems, your failure to ensure your drivers are qualified, and your failure to adequately maintain your commercial motor vehicles, your motor carrier operation poses an “imminent hazard” to public safety.

**EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL COMMERCIAL MOTOR VEHICLE OPERATIONS, INCLUDING ALL INTERSTATE AND INTRASTATE TRANSPORTATION OF VEHICLES AND/OR GOODS BY DRIVERS. FURTHER THE COMMERCIAL MOTOR VEHICLES IDENTIFIED IN THIS ORDER ARE PROHIBITED FROM BEING OPERATED IN INTERSTATE OR INTRASTATE COMMERCE BY ANY OTHER MOTOR CARRIER OR ANY DRIVER.**

Upon service of this Order, if any of your commercial motor vehicles and their drivers are operating in interstate or intrastate commerce, vehicles in transit may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the vehicles and/or goods can be safely secured. Thereafter you may not continue to operate the commercial motor vehicle. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

**NO ADDITIONAL CARGO MAY BE LOADED OR TRANSPORTED, NOR MAY THE COMMERCIAL MOTOR VEHICLES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT. A COMMERCIAL MOTOR VEHICLE MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR, FMCSA SOUTHERN SERVICE CENTER.**

## **I. JURISDICTION**

Edwin Ayache dba Three Angels Farms is a motor carrier engaged in interstate commerce and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133 and 31136). Three Angels Farms is required to comply, and to ensure its drivers comply, with the FMCSRs. (49 C.F.R. § 390.11). This Order applies to Edwin Ayache dba Three Angels Farms, Edwin Ayache, Individually, and Dorian Ayache, Individually, as well as any and all officers, directors, successors, assigns and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by you, including but not limited to the commercial motor vehicles identified by the following Vehicle Identification Numbers (“VIN”): VIN 1FUVDZYBXSP597825, VIN 1FUBAHCG43LL07437, VIN 1FUVDSEB7SP35946, and VIN 4V4WDBRF8TN7S8369. You may not use lessees, lessors, owner-operators, affiliates, assigns or other commercial motor vehicles or motor carriers to conduct any continued operations.

## **II. BASIS FOR ORDER**

The basis for determining that your motor carrier operations pose an imminent hazard to the public is that Three Angels Farms currently operates vehicles in a mechanically unsafe operating condition which, if driven, substantially increase the likelihood of serious injury or death to the vehicle occupants, other drivers and/or pedestrians. Further, Three Angels Farms fails to ensure its vehicles are properly and regularly inspected, repaired and maintained, thereby posing a continuing imminent hazard to the public. In addition, Three Angels Farms fails to ensure that it is complying with controlled substances and alcohol use and testing requirements, qualification of drivers’ requirements, and drivers’ hours of service requirements, thereby posing

a continuing imminent hazard. The FMCSA's Safety Measurement System ("SMS") indicates that Three Angels Farms exceeds by a significant margin the intervention thresholds in two of the six BASICS: Fatigued Driving (97.4%) and Vehicle Maintenance (96.3%).<sup>1</sup> Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to Three Angels Farms' drivers and the motoring public.

### **III. BACKGROUND**

Three Angels Farms is managed and controlled by Edwin Ayache and Dorian Ayache. The carrier employs three drivers, none of whom are presently qualified to operate a commercial motor vehicle. Three Angels Farms has continued to operate commercial motor vehicles in interstate commerce without an adequate vehicle maintenance program, adherence to pre-employment drug and testing regulations, and hours of service, log and records of duty status ("RODS") requirements, and with miniscule oversight of its drivers and their qualifications. During the past six months, Three Angels Farms has had two accidents involving poorly maintained vehicles and fatigued or disqualified drivers.

On January 17, 2012, a Three Angels Farms driver fell asleep behind the wheel, veered off the right side of the road and lost control, causing the trailer to overturn on interstate I-24. The trailer was carrying 38 horses and, as a result of the accident, three of the horses died. At the scene of the accident, the Tennessee Department of Safety cited Three Angels Farms with the following serious safety violations and placed the accident vehicle out-of-service:

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<sup>1</sup> The SMS is a tool for assessing available roadside performance data and ranking an entity's relative performance in any of the six Behavior Analysis and Safety Improvement Categories (BASICS). The SMS quantifies the on-road safety performance of individual entities to identify entities with significant safety problems, determine the specific safety problems an entity exhibits, and monitor safety problems through the Intervention Process. The SMS computes a percentile for each BASIC on a 0-100 scale and assigns a percentile rank to each BASIC, with 100 indicating the worst performance. Three Angels Farms' score is near the worst safety performance in these two BASICS.

<u>Section Code</u>	<u>Violation Description</u>
396.7	Unsafe operations forbidden
392.3	Operating a CMV while ill or fatigued
392.2	Failure to exercise due care
393.75(c)	5 <sup>th</sup> axle both tires were mostly bald
393.47(e)	3 trailer brakes out of adjustment beyond 2"
393.207(c)	Spring hanger on both sides of the rear trailer axle was wore through by the end of the rear leaf springs
393.201(a)	Cross members rusted throughout the under carriage of the trailer

After the January accident, the Three Angels Farms' driver stated that he had been working all night at the farm with only 30 minutes of rest during a 24-hour period.

**On June 12, 2012, a Three Angels Farms vehicle was involved in a second accident when its trailer, carrying thirty-six horses and traveling on I-40 West, collapsed and snapped in half. The trailer was carrying 36 horses and, as a result of the accident, one horse had to be euthanized. The Tennessee Department of Safety again cited Three Angels Farms with the**

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<u>Section Code</u>	<u>Violation Description</u>
383.23(a)(2)	Operating a commercial motor vehicle without a CDL
395.8(k)(2)	Driver failing to retain previous 7 days records of duty status
393.47(e)	Clamp or Roto type brake out-of-adjustment (2 <sup>nd</sup> axle left brake)
392.2	IRP Apportioned Tag or Registration Violation
393.47(e)	Clamp or Roto type brake out-of-adjustment (4 <sup>th</sup> axle both brakes)
396.3(a)(1)	Brakes Out of Service: Number of defective brakes equal to or greater than 20 percent of the service brakes on the vehicle
393.201(a)	Trailer frame broken in the middle
393.201(a)	Frame rails rusted in several areas with holes through the frame compromising the integrity of the frame
393.75(c)	5 <sup>th</sup> axle left/inside tire has in excess of 12 inches of tread missing
396.7	Operating trailer with holes rusted through several support beams

The driver of the Three Angels Farms vehicle was not a qualified driver because he did not have a valid commercial driver's license. The second driver in the vehicle was also not a qualified because his commercial driver's license had been suspended.

Following the second accident, the Tennessee FMCSA Division Office conducted a

compliance review of Three Angels Farms, and uncovered widespread regulatory violations that demonstrate a continuing and flagrant disregard for compliance with the FMCSRs. This compliance review has resulted in an Unsatisfactory rating for Three Angels Farms. During this review, the Tennessee Department of Safety conducted Level 5 inspections of Three Angels Farms' vehicles and placed three of the four commercial motor vehicles out-of-service. FMCSA investigators also determined that none of Three Angels Farms' three drivers was qualified to operate a commercial motor vehicle.

Three Angels Farms does not have a vehicle maintenance program in place to prevent the operation of unsafe motor vehicles as evidenced, *inter alia*, by the Tennessee State Patrol's post- accident inspections of the vehicles. Three Angels Farms prepares and/or maintains very few vehicle inspection, repair and maintenance records, and it does not require its drivers to accurately complete driver vehicle inspection reports. Indeed, Three Angels Farms' BASIC vehicle maintenance score of 96.3% exceeds the established BASIC threshold and is alarmingly high.

Three Angels Farms does not monitor its drivers' hours of service (HOS) to ensure that its drivers do not violate the hours-of-service regulations. FMCSA's investigation revealed that Three Angels Farms' operators, Edwin Ayache and Dorian Ayache, do not require its drivers to preserve supporting documents so that drivers' records of duty status may be accurately checked. Three Angels Farms' negligent oversight of its drivers results in drivers operating commercial motor vehicles at a time when they may be fatigued because of driving in excess of the maximum driving time, driving after the maximum on-duty time, and/or other HOS regulations. Three Angels Farms' BASIC fatigued driving score of 97.4% is disturbing high and reflects its poor safety performance and safety management failures.

Moreover, Three Angels Farms failed to follow FMCSA-mandated pre-employment controlled substance testing requirements to ensure that its drivers are able to safely operate its commercial motor vehicles. Three Angels Farms allowed one driver to operate its vehicles prior to the carrier receiving a negative pre-employment test result. In fact, the pre-employment test resulted in a positive finding for drugs. Despite this positive drug test, Three Angels Farms continued to allow this driver to operate its vehicles throughout the United States in blatant violations of the FMCSRs.

Three Angels Farms also fails to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its commercial motor vehicles. It does not maintain a complete driver qualification file on any of its drivers, and indeed, as of the present date, none of its three drivers are qualified to operate its vehicles. Three Angels Farms' continued and blatant disregard for the FMCSRs establishes an imminently hazardous and potentially deadly risk for its drivers and the motor public.

#### **IV. REMEDIAL ACTION**

To eliminate this imminent hazard, and before Three Angels Farms will be permitted to resume operations placed out of service by this Order, Three Angels Farms must take specific steps to ensure and demonstrate compliance with the FMCSRs.

##### **YOU MUST COMPLY WITH ALL PROVISIONS OF THIS ORDER**

**1. The commercial motor vehicles identified in this Order (VIN1FUVDZYBXSP597825, VIN 1FUBAHCG43LL07437, VIN 1FUYDSEB7SP35946, and VIN 4V4WDBRF8TN7S8369) may not be operated in interstate and/or intrastate commerce by any entity or by any individual until you have fully complied with the Remedial Actions set forth in this section.**

- 2. Three Angels Farms must ensure and demonstrate that its vehicles are in a safe operating condition, are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance), and there is an adequate maintenance program in place to ensure compliance with the FMCSRs.**
- 3. Three Angels Farms must require its driver to prepare Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that its drivers can report safety defects and/or deficiencies and establish procedures to ensure that reported safety defects and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again.**
- 4. Three Angels Farms must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. Three Angels Farms must ensure that every driver it uses has completed and furnished an employment application to be maintained in the carrier's records. Three Angels Farms must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. Three Angels Farms must ensure that it: obtains from each driver an annual list of traffic violations; obtains for each driver an annual Motor Vehicle Record; and that it performs an annual review on each driver's driving record. Three Angels Farms must ensure that it performs a three-year previous employment check on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23.**
- 5. Three Angels Farms must establish a DOT controlled substance and alcohol testing program in compliance with 49 C.F.R. parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and**

Testing) and provide evidence of this program to the Southern Service Center Field Administrator. Three Angels Farms must use only those laboratories certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine specimens. Three Angels Farms must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Three Angels Farms must ensure that driver supervisors undergo at least 60 minutes of training on alcohol misuse as well as an additional 60 minutes of training on controlled substance use that conforms to 49 C.F.R. § 382.603.

6. Three Angels Farms must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). Further, Three Angels Farms must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. Three Angels Farms must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver.

7. Three Angels Farms must implement a dispatch system that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.

8. Three Angels Farms must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they are able to conduct motor carrier operations consistent with those regulations. Driver training must also ensure that all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.

**9. Three Angels Farms must comply with all Orders issued by FMCSA.**

**V. RESCISSION OF ORDER**

Before resuming motor carrier operations, Three Angels Farms, Edwin Ayache and Dorian Ayache must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations pose, and adequately demonstrate to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration, United States Department of Transportation, the actions taken to eliminate the safety problems. Three Angels Farms cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of equipment and/or direct assignment of contracts or other agreements for service by Three Angels Farms requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. Three Angels Farms must have the Order rescinded by the Southern Service Center Field Administrator before it may continue interstate or intrastate operations.

Prior to rescission of the Order, Three Angels Farms will be required to:

- 1. IDENTIFY THE CAUSE FOR ITS NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS IT INTENDS TO TAKE TO OVERCOME ITS NON-COMPLIANCE AND A TIME TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).**
- 3. DEVELOP AND CERTIFY THE COMMITMENT OF THREE ANGELS FARMS TO COMPLY WITH THE FMCSRs.**
- 4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE**

**CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS. FOR PURPOSES OF THIS PARAGRAPH, “OWNERS AND COMPANY OFFICIALS” MEANS ANY PERSON OWNING MORE THAN A 10 PERCENT SHARE IN THREE ANGELS FARMS, ALL REGISTERED CORPORATE OFFICERS AND ANY INDIVIDUAL RESPONSIBLE FOR OR PERFORMING HIRING, QUALIFYING, OR SCHEDULING OF DRIVERS, OR SCHEDULING OR DIRECTING VEHICLE INSPECTION, REPAIR AND/OR MAINTENANCE.**

Any request to rescind this ORDER, and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Southern Service Center with a copy to the Division Administrator, Tennessee Division, at the following addresses:

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Blvd., NE, Suite 1700  
Atlanta, Georgia 30345

Division Administrator, Tennessee Division  
Federal Motor Carrier Safety Administration  
640 Grassmere Park, Suite 111  
Nashville, TN 37211

## **VI. FAILURE TO COMPLY**

Failure to comply with the provisions of this Operations Out-of-Service Order may subject Three Angels Farms to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. Three Angels Farms may be assessed civil penalties of up to \$16,000 per day for each day it continues the proscribed interstate or intrastate operations after the effective date and time of this Order. (49 C.F.R. Part 386 App. A. § IV(g)). If violations are determined to be willful, criminal penalties may be imposed, including

a fine of up to \$25,000 or imprisonment for a term not to exceed one year, or both. (49 U.S.C. § 521 (b)(6)(A)).

## **VII. ADDITIONAL PENALTIES FOR OTHER VIOLATIONS**

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

## **VIII. RIGHT TO REVIEW**

You have the right to an administrative review in accordance with 5 U.S.C. § 554 pursuant to 49 C.F.R. § 386.72(b)(4). If requested, administrative review shall occur within 10 working days of the issuance of this Order. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to the Field Administrator, Southern Service Center at the following addresses:

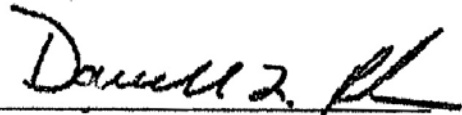
Assistant Administrator  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Field Administrator, Southern Service Center  
Federal Motor Carrier Safety Administration  
1800 Century Blvd., NE, Suite 1700  
Atlanta, Georgia 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that Three Angels Farms' operation constitutes an "imminent hazard" to the public.

**A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO  
COMPLY WITH THIS ORDER IMMEDIATELY.**

Date: 6/28/2012



Darrell Ruban, Field Administrator  
United States Department of Transportation  
Federal Motor Carrier Safety Administration

404-327-7400